

STATE RENT-CONTROL LEGISLATION, 1946-1947

JOHN W. WILLIS†

FEDERAL rent control, under the Housing and Rent Act of 1947,¹ is scheduled to terminate February 29, 1948. The date seems likely to be extended, but federal regulation will eventually come to an end. The housing shortage, however, will certainly endure for some period to come, at least in parts of the country.² A measure of continued control will probably be called for, and it will be to state and local governments that tenants will look.³

As of the end of the 1947 legislative sessions,⁴ only ten states had enacted rent control laws.⁵ Rent control bills were introduced in fourteen other states,⁶ but in most cases they never got out of committee. The Indiana bill passed one house; the Vermont bill passed both, but the two houses were unable to compose their differences and the bill failed of final enactment. Whether any further state legislation will be enacted in 1948 depends chiefly on the expiration date of the federal

† Member of the California Bar and of the Bars of the United States Supreme Court and the United States Court of Appeals for the District of Columbia.

1. Pub. L. No. 129, 80th Cong., 1st Sess. (June 30, 1947) (cited hereinafter as the Housing and Rent Act of 1947). See Willis, *The Federal Housing and Rent Act of 1947*, 47 COL. L. REV. 1118 (1947).

2. "Unless basic flaws are corrected in the building industry America seems statistically certain to be still ill-housed when 1957 rolls around." Wall Street Journal, Oct. 9, 1947, p. 1, col. 6. There was a serious housing shortage as early as 1939. See Note, 50 YALE L. J. 176 (1940).

3. Some cities have already enacted ordinances to implement or fill interstices in the federal law, or to continue control upon its demise. *E.g.*, New York City Local Laws No. 54, 66, 67, 68, Admin. Code §§ U41-6.0 to U41-9.0 (1947); Chicago, Ordinance of July 25, 1947; Philadelphia, Ordinance of August 13, 1947; Los Angeles, Ordinances No. 91,961, 92,334 (1947); San Francisco, Ordinance No. 4534 (1947). Discussion of these ordinances is beyond the scope of this article.

4. Forty-four states had regular sessions in 1947. Virginia had a special session, see note 5 *infra*. So also did Louisiana, but it was limited to appropriation measures.

5. Conn. Acts 1947, No. 394; ILL. STAT. ANN., c. 80 (Smith-Hurd, Supp. 1947); La. Acts 1946, No. 333; Md. Laws 1947, c. 507; Minn. Laws 1947, c. 632; Mo. REV. STAT. §§ 3015.1-12 (Supp. 1947); N. J. Laws 1946, c. 319, extended by 1947, c. 46; N. Y. Laws 1946, c. 274, reenacted by 1947, c. 704; Va. Laws Spec. Sess. 1947, c. 63; WIS. STAT. § 234.26 (Supp. 1947). Michigan and Rhode Island enacted emergency rent control laws during the "OPA holiday" of July, 1946. Mich. Acts 2d Spec. Sess. 1946, No. 1; R. I. Laws 1946, c. 1814. These laws expired in 1946 and the Michigan law was, for good measure, repealed by Mich. Laws 1947, c. 129.

ME. REV. STAT., c. 124, § 41 (1944) (derived from Me. Laws 1919, c. 256) prohibits landlords from demanding or collecting "an unreasonable or unjust rent or charge, taking into due consideration the actual market value of the property at the time, with a fair return thereon. . . ."

6. California, Colorado, Delaware, Indiana, Kansas, Massachusetts, Michigan, Montana, North Dakota, Oregon, Pennsylvania, Vermont, Washington, West Virginia.

act, since only nine states have regular sessions this year and three of them already have rent laws.⁷ If the federal Act is extended through 1948 there will be no necessity for other states to enact laws on the subject, at least until 1949; and, except in Wisconsin, only the threat of an untimely ending of federal controls has so far induced state legislators to consider the matter at all.

Rent control in the period after World War I was entirely on a local basis,⁸ and, in its first tentative incursion into the field in the World War II period, the federal government took the position that state and local control was preferable, and the national government should do no more than give counsel and advice.⁹ A model state law drafted by the Consumer Division of the National Defense Advisory Commission,¹⁰ however, was almost universally ignored; only Virginia enacted such a law, and it was never called into effect.¹¹ Congress in the Emergency Price Control Act,¹² nevertheless leaned over backward to allow state and local governments the first opportunity to stabilize rents. Section 2(b) of that Act provided that before the Price Administrator could establish rent controls in any area, he should first issue "a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents" within the area. Federal control could not become effective unless after sixty days rents for such accommodations had not in the Administrator's judgment been stabilized or reduced by state or local regulation, or otherwise, in accordance with his recommendations.¹³ By October, 1942, the entire continental United States and some outlying possessions had been designated as defense-rental areas. But only a handful of cities, mostly small, enacted legislation for the stabilization of rents, and in only two of these,

7. New York, New Jersey and Virginia. The other states are Kentucky, Louisiana (session starts in May), Massachusetts, Mississippi, Rhode Island and South Carolina.

8. U.S. HOUSING CORPORATION REPORT 29 (1920).

9. NATIONAL DEFENSE ADVISORY COMMISSION, CONSUMER DIVISION, BULL. No. 7, 9-10 (Jan. 7, 1941); BULL. No. 10 (March 15, 1941).

By 1945, however, the OPA could say that "if . . . war-time rent control is to be effective, reasonable rentals must necessarily be determined by centralized authority," relying on *Village Apartment Homes, Inc. v. Bowles*, 149 F.2d 649 (E.C.A. 1945), which does not support the quoted Statement. *City of Dallas, 3 PIKE & FISCHER AD. LAW 3194* (OPA Op. & Dec. 1945). See also OPA, FIRST QUARTERLY REP. 48, 51 (1942).

10. BULL. No. 10, *op. cit. supra* note 9.

11. VA. CODE ANN. § 2673(163)-(179) (Michie, 1942). This law expired by its terms in 1944. It was based on a variation of the N.D.A.C. bill, prepared by the NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, REPORT No. 70 (March, 1941).

A draft bill prepared by the Citizens' Housing Council of New York was introduced in the New York legislature in 1940, Senate Int. No. 2111, but given no consideration. For a discussion of this bill see Note, 50 YALE L.J. 176 (1940).

12. 56 STAT. 23 (1942), 50 U.S.C. § 902(b) (Supp. 1946).

13. See *18 Palmer Avenue, Inc. v. Porter*, 157 F.2d 595 (E.C.A. 1946).

so far as is known, was the local action deemed sufficient to keep OPA out of the picture.¹⁴

Except for the Wisconsin law, all of the statutes here under discussion were enacted prior to the signing of the Housing and Rent Act of 1947 and in anticipation of the possible termination of federal regulation. The New York act was passed, with admirable foresight, in March, 1946, and prevented a hiatus in rent control in that state during the "OPA holiday" of July, 1946.¹⁵ The New Jersey statute was enacted during the "holiday", although it had been in effect only four days when the OPA regulations were revived.¹⁶ The Louisiana act was also a product of this interim period, and shows it in its poor draftsmanship. The other six statutes were formulated during the first part of 1947, when the new federal act was itself still in the process of enact-

14. Flint, Mich. and Honolulu, Hawaii. See Flint, Ordinance No. 509 (1942); Honolulu, Ordinance No. 941 (1941).

Ordinances enacted in Neosho, Mo.; Eugene, Bend and Salem, Ore., were superseded by OPA controls. Neosho, Ordinance No. 33 (1942); Eugene, Ordinance No. 8800 (1944); Bend, Ordinance No. 315 (1943); Salem, Ordinance Nos. 3609 (1943), 3713 (1946). Fresno, Calif., Ordinance No. 2859 was held unconstitutional in *Peregoy v. City of Fresno*, Civil No. 65,185 (Cal. Super. Ct. 1944) and OPA regulation was subsequently introduced in the area.

Australia at first attempted to leave rent control to the states because "it was felt that they would be able to exercise the more effective control." DEPT. OF TRADE AND CUSTOMS, PRICE CONTROL UNDER THE NATIONAL SECURITY ACT 1939-1940 22 (1940). After the change of government in 1941, federal control of evictions was brought into effect in all states, and control of rents in all states except Western Australia and South Australia, which retained their own legislation. At the Premiers' Conference in August, 1946, it was decided to continue rent control on a basis of Commonwealth and complementary state legislation, and such legislation was enacted in all states; but at least one of these acts has expired, and it is doubted whether adequate complementary legislation will be forthcoming in the future. For this reason, and because of doubts as to the constitutionality of further Commonwealth control of rents, the Australian Parliament recently enacted the Constitution Alteration (Rents and Prices) Act, under which a referendum will be held (probably in May, 1948) on whether the Commonwealth Parliament should be vested with permanent power over rents and prices. Speech of the Hon. Nelson Lemmon, Minister of Works and Housing, in the Australian Parliament, Nov. 27, 1947.

Canadian rent control has been carried out by the Dominion Government from the outset, and there are no plans even yet to turn control over to the provinces. Letter from Owen Lobley, Rentals Administrator, Sept. 24, 1947.

Under the Swiss federal system regulation had to be left to the cantons, but the Federal Council adopted a model law, Arrêté de Conseil Fédéral, Oct. 15, 1941. See also INTERNATIONAL LABOR ORGANIZATION, EUROPEAN HOUSING PROBLEMS 223 (1923). A good deal of authority was originally delegated to the states in Germany, but in 1922 the system was federalized. *Id.* at 324-6.

15. See *Sanders v. Kibrick Realty Corp.*, 117 N.Y.L.J. 393 (N.Y. City Ct. 1947); TEMPORARY STATE HOUSING RENT COMMISSION REPORT (1946); Message of Gov. Dewey, N.Y. LEGIS. DOC. No. 1 at 13-4 (1947).

16. The act was superseded by the Price Control Extension Act of 1946 on July 26, 1946 (see § 5 thereof) and its operation was formally suspended on July 30 by proclamation of Gov. Edge.

ment, although some of them were not signed until after that act had become law. Because of this background, the state statutes in some respects are not well integrated with the federal law and, if they are not amended, ambiguities and difficulties may arise if and when the state laws go into effect.

APPLICATION OF THE LAWS

Again except for the Wisconsin statute, none of the laws under consideration is intended to take effect as long as federal controls are in force. The New York act originally provided in Section 11(1) that

"The establishment of a rent control area and the establishment of maximum rents therein and of regulations and orders relating thereto shall not be or become operative as long as rent control therein established by the federal price administrator pursuant to the Emergency Price Control Act of 1942 as amended, or other duly authorized officer or agency of the United States pursuant to any federal law, is in force and effect."

In spite of the use of the phrase "as long as rent control *therein* . . . is in force and effect," the Attorney General of New York ruled that the act could not be brought into force, even in an area of the state which was not under federal regulation, as long as federal rent control was being maintained anywhere in the state.¹⁷ The 1947 legislature confirmed this construction by striking out the second "therein" and adding the words

"whether or not by the terms of such federal act or law or by administrative regulation or order, it is limited or confined to or excepts any rent control area or other area or region, or any type, category or other classification of housing accommodations heretofore or hereafter subjected to control of rents, or housing accommodations heretofore or hereafter constructed."¹⁸

The wisdom of such self-denial is not apparent. Probably it is well enough not to have one area of the state under federal control and another under state control—although even this limitation might result in blocking needed action if, for example, a disaster wiped out a large percentage of the housing in some community not subject to federal

17. Op. Att'y Gen. N.Y., Dec. 12, 1946.

18. An amendment to permit the state law to go into effect as soon as the federal government relinquished control of any area or class of housing was defeated. 2 N. Y. SEN. J. 1771-2 (1947).

For a logomachy as to whether the amended clause would prevent the state law from being brought into effect in the inconceivable contingency of federal controls being abolished in New York State while retained in some other state, see Letter from John J. Lamula, *New York Times*, July 22, 1947, p. 22; Letter from Assemblyman Richard M. Goldwater, *Id.*, July 30, 1947, p. 20.

regulation.¹⁹ Why, however, the legislature in March, 1947, should have been so willing to accept in advance the exemption of "any type, category or other classification of housing accommodations" which Congress might thereafter agree on, is curious. The clause is poorly phrased, also, in its reference to types or categories of accommodations "heretofore or hereafter subjected to control of rents." What of accommodations never subjected to control, such as resort housing?²⁰

The Illinois act is identical with the original version of the New York legislation; the Connecticut, Maryland and Minnesota statutes are in substance the same. Missouri provides that "This act shall become effective at the expiration of the federal law relating to rent control, or shall be effective when the federal law permits state rent control regulation to supersede federal control. . . ." ²¹ The Indiana bill, as amended in the Senate, contained a startling variation on this idea: county, city and town governing bodies could have been empowered to create rent control commissions, but not until six months had elapsed after expiration or repeal of the federal law.²² The New Jersey and Virginia acts are silent on the question, but New Jersey's governor has held that the state law cannot be brought into effect as long as federal controls remain in force,²³ and Virginia's chief executive has made no move to put that statute into effect.

The bill to continue federal rent control, as passed by the Senate in May, 1947, contained a provision authorizing states to take over rent control upon certification by the governor that a state rent control statute had been enacted.²⁴ The clause was stricken out in conference. Even if it had been retained, it would have had little effect, because under an amendment proposed by Senator Ives and adopted by the Senate the state statute would have had to show affirmatively that it was intended to replace federal control.²⁵ None of them does make such a showing; indeed they show the contrary, with the possible exception of Missouri, and certainly with the exception of the Wisconsin act, which was not passed until the federal law had been signed, and which expressly applies during the time that federal control remains in effect, as well as afterward.²⁶

19. Federal control cannot be extended to any areas not under control on March 1, 1947. Housing and Rent Act of 1947, § 202(d).

20. See p. 361 *infra*.

21. MO. REV. STAT. § 3015.12 (Supp. 1947).

22. Indiana, S.B. 231, as amended, § 3 (1947).

23. New York Times, July 4, 1947, p. 8, col. 4.

24. S. 1017, 80th Cong., 1st Sess., § 5. The House voted down an amendment to the same effect. 93 Cong. Rec. 4541 (May 1, 1947).

25. See 93 Cong. Rec. 6196 (May 29, 1947).

26. The Wisconsin act of course adopts federal rent ceilings while they remain in effect. To the extent that it goes beyond the federal law with respect to evictions there may be some question as to its validity. See p. 372 *infra*.

All of the laws are temporary in nature, with expiration dates ranging from June 30, 1948 to June 30, 1949.²⁷

ACCOMMODATIONS COVERED

The acts are all limited to residential accommodations, however this is defined; only New York and Hawaii have regulated business and commercial rents, and discussion of such statutes is beyond the scope of the present article.²⁸ The Missouri law applies only to "apartments", which it defines as "any room or group of adjoining or connected rooms within any building which is occupied or intended to be occupied by one or more individuals as a residence, house, sleeping or lodging place . . ." Whether this was meant to be limited to dwelling units in multiple-family buildings, or whether it would cover single-family dwelling houses as well, is not clear from the context. The former interpretation might raise a question as to the constitutionality of the act, on the theory that it unreasonably discriminates against owners of apartment buildings, unless the courts could find that the legislature had some reasonable basis for supposing that control was needed only as to apartments. Whether constitutional or not, limiting control to apartments would certainly seem to be undesirable from a practical standpoint.

Except for certain hotel accommodations, the Wisconsin statute expressly applies only to housing for which a maximum rent, established under federal law, was "in effect on the last day said federal rent control law was in effect."²⁹ The Minnesota law seems susceptible of the same interpretation, since it provides that rents in effect in defense-rental areas in the state *pursuant to federal regulation* on the last day of federal control shall become the maximum rents.³⁰ The New Jersey statute is similar,³¹ and the New York law has been given the same construction,³² although for less substantial reasons.³³ The chief results of such a limi-

27. New York, New Jersey, Missouri, June 30, 1948 (this although Missouri has no regular session in 1948); Virginia, July 1, 1948; Minnesota, Jan. 15, 1949; Wisconsin, April 1, 1949; Maryland, June 1, 1949; Illinois, June 30, 1949; Connecticut, upon adjournment of the 1949 session sine die; Louisiana, upon adjournment of the 1948 session.

28. See Stephens, *Statutory Controls over Commercial Rents*, 17 N.Y. STATE BAR ASS'N BULL. 151 (1945); Note, 19 ST. JOHN'S L. REV. 179 (1945); Note, 21 N.Y.U.L.Q. REV. 427 (1946). The Hawaiian statute is Acts of 1945, No. 69.

29. Query as to the meaning of "in effect" as applied to maximum rents; would the clause cover, *e.g.*, accommodations which had previously been registered with OPA, but which at the time federal controls lapsed were owner-occupied?

30. Minn. Laws, 1947, c. 632, § 4. See also § 8, providing that "No maximum rent for any housing accommodation in any rent control area shall be increased . . . except as provided for in this act. . . ." Section 4 is the only section providing for fixing of maximum rents.

31. N. J. Laws, 1946, c. 319, § 4. This section refers to rents in effect on June 30, 1946. But compare § 9 of the statute, summarized p. 358 *infra*.

32. See p. 361 *infra*.

33. The New York act nowhere limits control to federally-controlled housing, and

tation would be to exempt from state control: all hotel accommodations, whether transient or permanent in nature;³⁴ all new construction completed on or after February 1, 1947;³⁵ "additional housing accommodations created by conversion on or after February 1, 1947";³⁶ accommodations not rented as housing accommodations at any time between February 1, 1945 and January 31, 1947;³⁷ accommodations not rented at any time while federal controls were in effect. Some of these exceptions, as we shall see, are written expressly into the state laws.

In addition, however, such a restriction on the scope of the state statutes may have an unexpected effect. The federal act provides that if a lease is made providing for a "voluntary" increase of rent up to 15%, as authorized in the proviso to §204(b), the accommodation in question shall not "be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title."³⁸ The purpose of the clause is not clear, but it has been construed as meaning that after December 31 there is no maximum rent on the premises but that the lease alone controls. If this construction is followed it is obvious that accommodations subject to such a lease will have no maximum rent on the date that federal controls terminate, and hence will not be subject to any restriction—after expiration or cancellation of the lease—in states such as Wisconsin, Minnesota, New Jersey and perhaps New York.³⁹ If there is any rational basis for this discriminatory classification, it is difficult to discern. It may be subject to challenge as denying tenants of such uncontrolled units the equal protection of the laws; in any event, it should be avoided by more careful draftsmanship of the state legislation.

while federal ceilings are to be retained so far as practicable, see p. 366 *infra*, there is nothing in the act to *prevent* accommodations not under federal rent ceilings from being brought under state control.

34. See p. 359 *infra*.

35. See p. 358 *infra*.

36. Housing and Rent Act of 1947, §202(c)(3)(A). Housing converted *after termination* of the federal act would probably be exempt from control, if state control were limited to accommodations governed by the federal law, on the theory that after conversion they were not the same accommodations as those to which the federal ceilings applied. *Delsnyder v. Gould*, 154 F.2d 844 (App. D.C. 1946).

37. Housing and Rent Act of 1947, §202(c)(3)(B).

38. *Id.*, §204(b). See Willis, *supra* note 1, at 1132-3.

39. See New York Times, Nov. 6, 1947, p. 29, col. 1, quoting unidentified "rent experts" as saying that accommodations subject to leases of this sort "would not be brought back under ceilings again, even when the state rent law became effective." But *cf.* New York Times, Jan. 7, 1948, p. 27, col. 5 (indicating that the state law may be amended to provide a measure of control over such accommodations.)

As of Nov. 1, the percentage of housing accommodations subject to control which had come under such leases was 8.5 in New York State, 10.5 in New Jersey, 14.9 in Minnesota and 20.4 in Wisconsin. U. S. Office of Housing Expediter, Press Release No. 930, Nov. 10, 1947.

NEW CONSTRUCTION

One subject on which the acts under consideration are almost unanimous is the exemption of new construction. In this they follow the lead of the New York Business and Commercial Rent Laws,⁴⁰ and the earlier New York housing laws of the 1920's,⁴¹ and are in line with the federal act, which exempts accommodations "the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947."⁴² The statutes vary somewhat in their terms, but all achieve about the same end. The New York and Illinois acts exempt buildings completed on or after rent control becomes operative in the area; in Connecticut the determinative date is the date of passage of the act. Virginia excepts construction *begun* after January 1, 1947; Missouri, construction *completed* after that date. The New Jersey statute takes a different tack; what it apparently means is that the owner of newly constructed housing may set his own "first rent", but that after he has done so he may not raise it, nor may he evict the tenant except in accordance with the act and regulations.⁴³

The Minnesota legislators attempted to copy an earlier draft of the federal act which exempted "any accommodations construction of which commenced on or *after* February 1, 1947," but by an apparent slip of the pen the phrase came out "on or *before* February 1, 1947," which renders it meaningless, unless it be interpreted to mean "commenced on or before February 1, 1947 and completed thereafter."⁴⁴ The act also excepts, as does the federal law, "additional housing accommodations created by conversion on or after February 1, 1947," it being the only state statute to do so in terms,⁴⁵ although the Virginia act contains a rather cryptic exemption of "any habitable building, no part of which has been used for dwelling purposes prior to the convening of the legislative session at which this act is adopted."

Exemptions of this sort are of course motivated by the belief that rent control impedes building activity and that excepting new housing from control will remove the impediment.⁴⁶ Unfortunately, however, exemption of new construction is almost certain to result in a wide

40. N. Y. Laws 1946, cc. 272-3, amending N. Y. Laws, 1945 cc. 3 and 314 respectively. See Report of the Joint Legislative Committee to Study Rents, N.Y. LEGIS. DOC. NO. 46 at 13 (1946).

41. N. Y. Laws 1920, c. 944, § 10. See also Willis, *supra* note 1, at 1122.

42. Housing and Rent Act of 1947, § 202(c)(3)(A).

43. N. J. Laws 1946, c. 319, § 9.

44. Accommodations completed after February 1, 1947 will not be subject to the Minnesota law in any event, see p. 356 *supra*.

45. See note 36 *supra*.

46. See, *e.g.*, H. REP. NO. 317, 80th Cong., 1st Sess. 13-4 (1947); SEN. REP. NO. 86, 80th Cong., 1st Sess. 4 (1947); Report of the Joint Legislative Committee to Study

disparity between uncontrolled rents of new housing and controlled rents of old housing.⁴⁷

HOTELS

There is less unanimity on the question whether hotel rents should be controlled. The Housing and Rent Act ended federal rent control over all hotel accommodations, permanent as well as transient.⁴⁸ In removing protection from permanent occupants the act probably went too far, and city councils in New York, Chicago, Los Angeles and several other cities have reimposed controls, although usually allowing a percentage increase over June 30 levels.⁴⁹ The Wisconsin statute, which was passed after the enactment of the federal law, also applies by its terms to rents charged permanent guests in hotels, although not to "hotel accommodations for transient guests."⁵⁰ New York and New Jersey expressly include hotels in the definition of "housing accommodations" or "housing space". The Illinois, Maryland and Missouri laws, on the other hand, expressly do not apply to hotels, and the Minnesota statute, patterned after an early version of the federal act, exempts "any accommodations which consist of, or are located in, any transient hotel, residential hotel, tourist home, or motor court." The Connecticut act is noncommittal on the point, although it seems broad enough to cover hotels;⁵¹ the Virginia act includes hotels in the definition of "dwelling", but then provides that rent control under the act shall not apply to hotels "beyond the extent that Federal rent control was actually in force therein on the day before the aforesaid Federal rent control laws and applicable regulations shall have expired," which of course means that they will not be covered at all.

As a practical matter, states other than Wisconsin will probably not attempt to regulate hotel rents even where the legislation permits it,

Rents, N.Y. LEGIS. Doc. No. 46 at 13 (1946); Message of Gov. Dewey, N.Y. LEGIS. Doc. No. 1 at 14 (1947); Report of the Inter-Departmental Committee on Rent Control, Cmd. 6621, p. 10 (London, 1945).

47. According to "a survey by federal housing officials," rents of new construction decontrolled by the Housing and Rent Act of 1947 average 60 to 70% above controlled rents of comparable older units. *Washington Daily News*, Nov. 28, 1947, p. 46. In foreign countries, the disparity is sometimes 200 or 300%. Helm, *Mexico*, *Atlantic Monthly*, July, 1946, p. 137. EMBASSY REPORT No. 105, Mexico, D.F., Feb. 4, 1946; *Hamburger Fremdenblatt* (Budapest, Dec. 16, 1943).

48. Housing and Rent Act of 1947, § 202(c) (1)-(2).

49. See note 3 *supra*.

50. "Permanent guest" is defined as "Any person who has been an occupant of a housing accommodation in a hotel continuously since January 1, 1947 and not on a day rate basis." WIS. STAT. § 234.26(2) (g) (Supp. 1947).

51. "As used in this act, the term 'housing accommodation' shall mean any building or part thereof occupied or suitable for occupancy as a place of abode. . . ." Conn. Acts, 1947, No. 394, § 1.

in view of the difficulty of reimposing controls after many months without regulation.⁵²

FARM ACCOMMODATIONS

Several statutes expressly exclude accommodations situated on a farm. The Illinois legislators were so anxious to accomplish this result that they repeated the exclusion three times over, although with slight variations in language: first in the definition of "housing accommodation", again in the definition of "community" and finally in the section on powers of the rent commissions. All three provisions in substance exempt buildings or structures outside a city, village, or incorporated town used primarily in connection with agricultural pursuits. The Missouri law excepts "any residence on a farm which is occupied by any person engaged in the operation of said farm." Minnesota exempts "farm tenant houses, and dwellings situated on farm lands containing 25 acres or more." Wisconsin repeats the exemption, contained in the OPA regulations and continued by the Housing Expediter⁵³ of "a dwelling situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon," while the New Jersey statute in the same words directs the rent control commissioner to provide for such an exemption. These provisions are sensible, for the principles applicable to control of urban rents are not well adapted to farm housing, and there has been no demand for regulation of such rents. Similar exemptions are found in many foreign statutes,⁵⁴ although agricultural rents are sometimes the subject of special legislation.

OTHER EXCEPTIONS

The New York statute, as originally enacted, excepted from the definition of "housing accommodations" "a hospital, convent, monas-

52. This may not be true where municipal control has bridged the gap, as in New York City and Chicago, see p. 352 *supra*.

53. OPA Rent Regulation for Housing, § 1(b) (1), 11 FED. REG. 12055 (1946). OHE Controlled Housing Rent Regulation, § 1(b) (1), 12 FED. REG. 4332 (1947).

54. See Great Britain: Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, 10 & 11 GEO. V, c. 17, § 12(2) (iii) (house let together with land whose taxable value let separately would exceed $\frac{1}{4}$ taxable value of house, not covered); Rent and Mortgage Interest Restrictions Act, 1939, 2 & 3 GEO. VI, c. 71, § 3(3) (house let with agricultural land exceeding two acres in extent, not covered); Eire: Act No. 4 of 1946, § 3(2) (g); British Guiana: Ordinances of 1941, No. 23, § 3(4) (building let with agricultural land, not covered); New Zealand: Fair Rents Act of 1936, § 2 (house let with land other than site, garden or other premises in connection therewith, not covered); Australia: National Security (Landlord and Tenant) Regulations, S.R. 1945, No. 97, Reg. 8 ("the premises of any grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm or bee farm"); Canada: Wartime Prices & Trade Board, Order No. 294, § 2(1) (b), Order No. 315, § 2(1) (a); see also *Morris v. Louw*, S. Afr. L. Rep. [1939] C.P.D. 395 (farm, let with a farmhouse, is not a "dwelling").

tery, asylum, public institution, or college or school dormitory."⁵⁵ This has been copied verbatim in Illinois, Maryland, Minnesota, Virginia, and Wisconsin; the Missouri statute is substantially identical.⁵⁶ Connecticut and New Jersey make no such exemptions. The 1947 amendment to the New York law added a reference to "any institution operated exclusively for charitable or educational purposes."

Minnesota's law exempts "resort property"; Wisconsin's, "dwelling accommodations used for summer or winter resort purpose and customarily rented or occupied on a seasonal basis prior to the date this section becomes operative." New Jersey provides for exemption of "housing space rented, leased or subleased for seasonal use." Most summer and winter resort housing was exempt under the OPA regulations, as it is under the regulations of the Housing Expediter.⁵⁷ The New York law does not in terms except resort housing, but since rents will generally be fixed under the law on the basis of the maximum rents under the federal law, it has been assumed that resort housing will for the most part be left uncontrolled. This clearly is the intent of the legislature. In two successive sessions, Democratic members sought to bring summer resort housing under control, contending that rents had risen exorbitantly and that the chief reason OPA had not extended rent control to such housing was a lack of personnel and funds.⁵⁸ The Republican majority of the Joint Legislative Committee to Study Rents rejected the proposal, characterizing it as "frivolous",⁵⁹ and it was not adopted. Whether the issue will be raised for a third time in 1948 is not known. On the merits, it seems questionable whether the state is justified in assuming the burden of policing rents of a purely "resort" nature. The suggestion can scarcely be dismissed, however, as "frivolous".⁶⁰

The Minnesota law repeats the exemption, contained in the federal act,⁶¹ of "any accommodations which at no time during the period

55. This language was copied from the N.D.A.C. draft bill, *op. cit. supra* note 9, which in turn took it from the draft bill prepared by the Citizens' Housing Council of New York, *supra* note 11.

56. The latter part of the exception in the Missouri act refers to any "public institution or college, college dormitory, dormitory operated by a non-profit corporation or organization. . ."

57. OPA Rent Regulation for Housing, § 1(b) (6), 11 FED. REG. 12055 (1946). OHE Controlled Housing Rent Regulation, § 1(b) (6), 12 FED. REG. 4332 (1947).

58. Reports of the Joint Legislative Committee to Study Rents, N.Y. LEGIS. DOC. NO. 46 at 16 (1946); N.Y. LEGIS. DOC. NO. 55 at 16-7 (1947) (minority views); Assembly Int. Nos. 1649, 1856, 2385, 2650 (1946); Assembly Int. No. 905 (1947); see also Assembly Int. Nos. 749, 1225 (1945).

59. N.Y. LEGIS. DOC. NO. 46 at 15 (1946); N.Y. LEGIS. DOC. NO. 55 at 16-7 (1947).

60. See also the statement that "At their most divergent points the differences of the Republican and Democratic members of the Committee represent the principles of free enterprise upon which the success of our governmental system rests and the theory of collectivism advocated by the disciples of Karl Marx." N.Y. LEGIS. DOC. NO. 55 at 17 (1947).

61. Housing and Rent Act of 1947, § 202(c) (3) (B).

February 1, 1945, to January 31, 1947, both dates inclusive, were rented as housing accommodations." The purpose of this exception is to bring back on the market accommodations withheld from renting because of dissatisfaction with the rent ceilings that would be applicable, although it has been criticized as discriminating in favor of landlords who held their property off the market at the very time when returning veterans and others needed it most.⁶² Information is not yet available as to how many units have actually been put on the market under the stimulus of this enactment.⁶³ Since it is in the federal act, however, the clause might as well be included in the state legislation, again because of the legal and political difficulties involved in attempting to bring under control rents which the federal act expressly decontrolled.

The Minnesota law also contains an exemption copied from an earlier version of the federal act, but eliminated in conference,⁶⁴ of "any accommodations occupied by one individual or one family and with respect to which a maximum rent established and maintained under authority of the Emergency Price Control Act of 1942, as amended, in excess of \$225 a month was in effect on September 1, 1946." Limitations of this sort have frequently been employed as a means of restricting rent control to those most in need of it,⁶⁵ or as a method of decontrol,⁶⁶ but the \$225 figure is so high as to be practically meaningless.

The Wisconsin act has picked up from the OPA and Housing Expediter's regulations⁶⁷ an exception of "dwelling space occupied by domestic servants, caretakers, managers, or other employes to whom the space is provided as part or all of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part." The New Jersey statute, in the same words, provides for an administrative exception of such accommodations. Virginia excepts public housing projects.

Only the Virginia, Wisconsin and Connecticut acts expressly delegate administrative authority to make further exemptions than those specified in the respective statutes. The New Jersey law directs the rent control commissioner to exempt certain specified classes of housing,⁶⁸

62. See H. R. REP. NO. 317, 80th Cong., 1st Sess. 14 (1947) (minority views); 93 Cong. Rec. 4441, 4448 (April 30, 1947).

63. Landlords claiming exemption under this clause are not required to file any reports with OHE, although they may do so at their option, Controlled Housing Rent Regulation, § 1(b) (9) (ii), as amended by Amendment 2, 12 FED. REG. 5700 (1947).

64. S. 1017, 80th Cong., 1st Sess. § 5 (1947); 93 Cong. Rec. 7439 (June 19, 1947).

65. *E.g.*, Great Britain: Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, 10 & 11 GEO. V, c. 17, § 12(2); New Zealand: Fair Rents Act of 1936, § 3(1) (c)-(d); Chile: Law No. 6844 (1941); Note 50 YALE L. J. 176, 179 (1940).

66. N. Y. Laws 1926, c. 6; 1928, c. 826; Mexico, Decree of Feb. 11, 1946.

67. OPA Rent Regulation for Housing, § 1(b) (2); OHE Controlled Housing Rent Regulation, § 1(b) (2).

68. Seasonal accommodations, farm housing, and space occupied by service employees.

but does not clearly authorize him to create further exceptions. The New York and Illinois acts are ambiguous.⁶⁹ Administrative exceptions should be authorized, however, in order to permit decontrol of particular classes of housing as to which there is no need for regulation.

AREAS COVERED

There is no uniformity among the various acts on the question of what geographic areas should be subject to control and, specifically, whether rent control may be extended to areas not under federal control at the expiration of the federal law. Several alternatives were open to the legislators, and each of them has been adopted in one or more states. The Connecticut statute says nothing on the matter, since the whole state has been subject to federal rent control since July 1, 1942, and the legislature apparently presumed that the question should be handled on a statewide basis; particular areas can be decontrolled under a provision to be discussed below. In New Jersey, similarly, the law provides for rent control boards in every county of the state; not until after the state act had been extended in April of 1947 was any part of the state removed from federal control, and then only a single county. In Virginia, on the other hand, where only certain areas are under the federal regulations, state rent control can go into effect only in such areas as the Governor may designate, and it is provided that such areas must theretofore⁷⁰ have been designated by the appropriate federal agency as areas in which federal controls applied. The Wisconsin law, as has been observed, is limited to accommodations which were subject to federal regulation, which renders moot the question of areas, at least to begin with.⁷¹ The New York statute, while empowering the rent commission to bring any part of the state under control, expressly provides that

"If rent control established pursuant to any federal law is in force and effect in any area of this state immediately preceding the time that rent control pursuant to this act shall become operative therein, the commission *shall* establish such area as a rent control area under this act . . ." (*italics added*).

The Missouri law is similar: all federal defense-rental areas where control is in effect on the expiration of the federal law automatically come

69. "Any regulation or order under this section . . . may provide for such adjustments and *reasonable exceptions* as in the judgment of the commission are necessary or proper in order to effectuate the purposes of this act." Sec. 4(4). This language was taken from the Emergency Price Control Act, *supra* note 12.

70. Presumably the act means that federal control should have been in effect at the time the federal legislation expired, and not have been previously terminated.

71. WIS. STAT. § 234.26(2) (b) (Supp. 1947) defines "rent control area" as any area in which federal controls were operative on the day federal rent regulation terminated. However, the term is used only in § 234.26(8), which provides for area decontrol.

under state control, and additional areas can be brought under control by order of the circuit court or circuit judge on petition of at least ten qualified voters. The Illinois law, on the other hand, although in most respects duplicating the New York statute, leaves it up to each community whether or not to establish rent control or continue federal control. So does the Maryland law; but, although in one section the law purports to delegate authority to the mayor and city council of "every city" and the county commissioners of "every county" in the state, another section excludes from the operation of the act some thirteen counties, seven of which were subject to federal controls when the act was passed—including Prince Georges, a county adjacent to the District of Columbia and one of the most populous of the state.

The Minnesota act is most ambiguous. At first glance it seems to follow the New York law, since it defines "defense-rental area" as any area subject to federal rent control, defines "rent control area", in almost the very words of the New York act, as "an area designated by or pursuant to this act" as an area where rent increases have resulted or threatened to result, and goes on to provide that all defense-rental areas in existence on the termination date of federal control shall automatically become rent control areas; but nowhere in the act is anyone given authority to designate additional areas as rent control areas, unless it be in the general delegation of authority to the commissioner to "make rules and regulations necessary in order to effectuate the purposes of this act" in Section 5.

The approach taken by the New York and Missouri statutes is probably the best. In order to avoid needless confusion and hardship, all federal rent control areas should automatically continue under state control until it can be determined whether decontrol is advisable; and while in all probability control will not be extended to additional areas, the door should not be shut against such action if it should prove to be necessary.

AREA DECONTROL

Like the federal act,⁷² all of the state acts look toward a termination of control at as early a date as is practical. In addition to being temporary in nature,⁷³ almost all of them contain provisions for decontrol of particular areas even before the expiration of the entire statutory scheme.

The New York act provides for decontrol "forthwith" whenever the rent commission finds that, in any area or portion thereof, the percentage of vacancies is 10% or more, or the availability of adequate rental housing and other relevant factors are such as to make rent control

72. Housing and Rent Act of 1947, § 204(c), (e).

73. See note 27 *supra*.

unnecessary.⁷⁴ In proper cases the commission may reestablish controls in such areas at a later date. The Illinois act has the same provision, except that the determination is left to the respective community housing rent commissions; the Connecticut law is practically identical, the local boards being granted the final authority. The language of the New York act is also copied in the Minnesota law, with the exception of the reference to recontrol; as under the federal law, local boards may recommend decontrol, but the state Commissioner of Administration decides. In Wisconsin, the Governor has authority to decontrol any area or part thereof if he "finds that a public emergency no longer exists in respect to" such area or part. In Missouri, the circuit court or judge, on petition of ten qualified voters, may abolish any rent control area or diminish its boundaries if it finds "that the demand for residential housing facilities is not substantially in excess of available housing facilities." Under the Virginia act, the Governor has authority to "amend, supplement or revoke" his declarations as to areas subject to control; but a proviso added in the course of passage empowers "the local governing body in any political subdivision of any rent control area" to declare an end to the emergency in such political subdivision. A similar clause was inserted in the House bill to continue federal rent control, but was stricken out in conference.⁷⁵ Certainly there can be little to recommend such a division of responsibility. The enactment by the House of the clause referred to drew universal criticism,⁷⁶ and the Virginia act is even more inept, in permitting the local governing body of any small county or city to veto the decision of the chief executive of the state. Local authorities should have the right to recommend decontrol of their respective areas, since they are familiar with conditions in the community, but decision should rest with a central authority who can take an over-all view of the picture.

MAXIMUM RENTS

Three main methods of rent control have been used in various parts of the world, either by themselves or in combination:⁷⁷ the "freeze" system, which was employed by the OPA and has been continued under the Housing and Rent Act of 1947; the "fair rents" system, which was utilized in New York and the District of Columbia in the 1920's, as well as in Australia, New Zealand, and elsewhere;⁷⁸ and the "percentage"

74. A somewhat similar provision, but inordinately more complicated, was found in a model bill drafted by the Citizens' Housing Council, *supra* note 11; see Note, 50 YALE L. J. 176, 178 (1940).

75. Willis, *supra* note 1, at 1127.

76. *Ibid.*

77. See AMERICAN BAR ASS'N PROCEEDINGS (THE SECTION OF INTERNATIONAL AND COMPARATIVE LAW) 142-3 (1946).

78. See Willis, "Fair Rents" Systems, 16 GEO. WASH. L. REV. 104 (1947).

system, used chiefly in Latin America. All of these variant methods may be found in the statutes under consideration.

The easiest course for the legislators to have taken, and probably the best one, would have been simply to provide for a continuation of federal ceilings—perhaps with some increase—or to delegate the whole question to a commission or administrative officer, with an intimation that the former ceilings were to be maintained, subject to adjustment in individual cases. This in fact is what most of the statutes do. New York, for instance, borrowing the language of the old Emergency Price Control Act, authorizes the state rent commission to “establish such maximum rent or maximum rents . . . as in the judgment of the commission will be generally fair and equitable and will effectuate the purposes of this act.” “So far as practicable,” the commission is to “ascertain and give due consideration to the rents established pursuant to federal law or otherwise prevailing” on or about January 1, 1947.⁷⁹ If federal rent control is in effect in any area immediately preceding the time that the state law becomes operative therein, the commission *shall* “fix maximum rents for housing accommodations therein . . . in conformity with those in force and effect at such time pursuant to such federal law.” However, maximum rents may be lower than those “established pursuant to federal law or otherwise prevailing for the rent control area housing accommodations at the time of the issuance of” the regulation or order. While these directions are not entirely consistent, the commission will probably be able to follow them without much difficulty. The Illinois statute is similar, except that the rent levels to be considered are those of January 1, 1946,⁸⁰ and the local commissions are required to conform to federal ceilings only “as nearly as may be.” Maryland’s act authorizes local governing bodies to continue the existing federal regulations until each such body “may be able to provide its own regulations and controls,” but puts them under no compulsion to preserve federal ceilings.

The Connecticut, New Jersey and Minnesota statutes automatically continue the maximum rents under the federal law as ceilings under the state law, subject to adjustments as provided for.⁸¹ In Wisconsin, the maximum rent after expiration of federal control is the amount legally chargeable on June 30, 1947,⁸² under the federal law, plus 15%

79. If, prior or subsequent to January 1, 1947, undue rent increases have resulted or threatened to result, the date may be moved back not more than one year. An amendment to require rents to be rolled back to January 1, 1947 levels was defeated. 2 N. Y. SEN. J. 1772 (1947).

80. The draftsmen apparently copied the original New York act. The latter was amended in 1947 to substitute “January 1, 1947” for “January 1, 1946.”

81. The New Jersey act refers to lawful maximum rents on June 1, 1946. As noted above, the act was passed during the “OPA holiday” of July 1946.

82. The Wisconsin act makes no provision for accommodations first rented after June

of such amount, and plus an additional 5% as to any tenant who was in occupancy at any time after June 30 and refused or failed to agree to a "voluntary" increase up to 15% under the federal Housing and Rent Act. If the maximum rent at the expiration of the federal law is more than 115% (or 120%) of the June 30, 1947 rent, such higher rental shall be permitted. For "permanent" hotel guests, not protected by the new Federal act, the maximum rent is 125% of the June 30 rate. The Louisiana act would limit rents to (1) 125% of the January, 1940, rent, or (2) 120% of the January, 1942 rent, or (3) the highest rent legally charged between February, 1942 and June, 1946, whichever is the highest.⁸³ The Indiana bill, as passed by the Senate, would have required rents to be fixed at not less than 115% of the rentals charged on the "freeze date" and "not more than a percentage increase of these rents based upon the percentage of increase in the Cost of Living Index of the Department of Labor since the freeze date." Where rents had been adjusted by the federal agency having jurisdiction, the most recent adjustment would have been considered the rent as of the freeze date.⁸⁴

The Virginia statute takes an entirely different tack. It is a "fair rent" act, based on a draft prepared by the National Institute of Municipal Law Officers in 1941, which was in turn a variation of a bill drafted by the National Defense Advisory Commission.⁸⁵ Briefly, it provides for the determination by each local board of a "normal rent date", defined as "the latest date at which rental conditions within the area or class of dwellings to be regulated had not yet been affected by the national defense program." The rent paid on the normal rent date, plus any additional amount which the board may allow by reason of a general rise in taxes and maintenance or operating costs constitutes the "normal rent". The normal rent may not be less than 115% of the rent prevailing for the particular dwelling or for a comparable dwelling on April 1, 1941. On petition of a landlord or tenant, the board may determine the "fair and reasonable" rent for a particular dwelling. The normal rent is *prima facie* the fair and reasonable rent, but the landlord is entitled to "a reasonable return on the fair market value of the dwelling." Until the fair and reasonable rent is determined, rents are frozen at the amount charged at the time the law is put into effect. The board may, however, provide by general order for an adjustment

30, 1947, but almost all such accommodations are exempted from the federal act, see Willis, *supra* note 1, at 1120 *et seq.*

83. La. Acts 1946, No. 333, § 2. See also note 89 *infra*.

84. Indiana, S.B. 231, as amended, § 9(1) (1947).

85. See note 11 *supra*; Willis, *The Virginia Emergency Fair Rent Act of 1947*, 33 VA. L. REV. 395 (1947).

upward of all rents in the area—including those already fixed as "fair rents"—but not to exceed 15%.⁸⁶

The Missouri act is a sort of conglomerate of the freeze, the fair rent and the percentage systems. The maximum rent for "apartments" rented or offered for rent prior to the effective date of the act is 115% of the rent on January 1, 1947. If the maximum rent cannot be fixed under this provision,⁸⁷ it shall not exceed 10% per annum of the reasonable value of the accommodation, "except that the actual cost of water, gas, electricity, maid or other service furnished in connection with any apartment may be added to the maximum rent hereby fixed but this exception shall not be construed to authorize the addition to such maximum rent hereby expended for the repair, redecoration or maintenance of any apartment or building." The reasonable value of an "apartment" is determined by pro-rating the reasonable value of the building according to relative floor area;⁸⁸ the reasonable value of the building is the fair market value as of January 1, 1947, plus, if the building was remodeled, converted or furnished since that date, the actual cost of the remodeling, converting or furnishing. The Louisiana act is similar to the Missouri law, in that maximum rents for premises first rented subsequently to June 30, 1946 (sic) or not previously registered with OPA are limited to one per cent per month of the cost price or fair appraised value.⁸⁹

The approach followed in the states other than these last three is undoubtedly preferable, particularly in view of the temporary nature of the statutes. The fair rent system, embodied in the Virginia Act, is not devoid of merit;⁹⁰ but it is too complicated for such a short-term operation as state rent control in Virginia is likely to be, and, too, Virginia is essentially a rural state, while effective administration of a "fair rents" statute calls for a good deal of expertise. The act, more-

86. Section 14 of the Virginia act copies the provision of the New York statute that "the Board may fix maximum rents for housing accommodations . . . in conformity with those in force and effect at such time pursuant to such federal law," but this is entirely out of context and without meaning, see Willis, *supra* note 85, at 408-9.

87. Newly constructed accommodations are exempted from any control.

88. If the building is devoted exclusively to apartments, the reasonable value is apportioned according to the ratio between the area of the apartment and the total floor area of all apartments in the building. If the building is devoted to apartments only in part, the reasonable value is apportioned between residential and other uses according to the relative floor area. MO. REV. STAT. § 3015.4 (Supp. 1947). The ineptitude of this method of apportionment seems obvious. Only half of the floor space of basement or attic rooms not ordinarily used as living quarters is considered floor area. *Id.*, § 3015.1(5).

89. "In the case of furnishings not under OPA rent control" (a meaningless provision, since furnished accommodations were subject to OPA regulations just as were unfurnished) charges are limited to 3% per month on the value of the furnishings, La. Acts 1946, No. 333, § 2.

90. See Willis, *supra* note 78.

over, contains too many provisions looking toward increases in rents. The Missouri statute is satisfactory enough insofar as it continues former ceilings, even with a 15% increase over January 1, 1947 levels, but the provisions for determination of rents on accommodations not coming within this clause are scarcely workable.

ADJUSTMENTS

The "freeze" system of rent control necessarily involves provision for individual adjustments in cases where the frozen rent is, for some reason, unfair to the landlord or the tenant. The Emergency Price Control Act recognized this and empowered the Price Administrator to "provide for such adjustments . . . , as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act."⁹¹ The OPA did authorize adjustments on ten or a dozen grounds, but this did not satisfy Congress, and in 1944 the act was amended to require provision for individual adjustments in cases where the rent on the freeze date was, due to "peculiar circumstances", substantially higher or lower than rents generally prevailing in the area, and where "substantial hardship" had resulted since the maximum rent date from substantial and unavoidable increases in property taxes or operating costs.⁹² The adjustment provisions of the OPA regulations have been continued and expanded by the Housing Expediter under the new Housing and Rent Act;⁹³ indeed, the Expediter now authorizes rent increases on the ground merely that the rent is below comparable levels—something which OPA consistently refused to do.⁹⁴ The Housing and Rent Act also authorizes increases up to 15% by agreement between landlord and tenant, under certain conditions.⁹⁵

The necessity for individual adjustments is recognized in all of the acts which are based on the "freeze" system, except the Wisconsin stat-

91. 56 STAT. 23 (1942), 50 U.S.C. § 902(c) (Supp. 1946). The District of Columbia Emergency Rent Act, 55 STAT. 788 (1941), D. C. CODE § 45-1604 (Supp. 1946), however, specifies certain limited grounds for adjustments.

92. Stabilization Extension Act of 1944, 58 STAT. 632, 50 U.S.C. § 902(c) (Supp. 1946). See *Rockcliffe Realty Corp. v. Bowles*, 151 F.2d 339 (E.C.A. 1945); *Kuslin & Rotberg, Inc. v. Porter*, 153 F.2d 1016 (E.C.A. 1946); *Hampshire Holding Corp. v. Creedon*, 161 F.2d 734 (E.C.A. 1947).

93. Controlled Housing Rent Regulation, § 5(a) (11), (12), as amended by Amendment 2, 12 FED. REG. 5700 (1947).

94. *Lakemore Co.*, 1 PIKE & FISCHER AD. LAW 1394 (OPA Op. & Dec. 1942); *Equitable Trust Co.*, *id.* at 1474; *Clinton Square Hotel Co.*, *id.* at 1484; *315 West 97th Street Realty Corp.*, 2 *id.* at 3045; *Weisman & Wiesenthal*, 3 *id.* at 3107; *Wascea Realty Corp.*, 3 *id.* at 3320.

Adjustments on this ground were authorized by Honolulu, Ordinance No. 941, § 4(a), as amended in 1945.

95. Housing and Rent Act of 1947, § 204(b). Such leases must have been executed prior to December 31, 1947 and must run through 1948.

ute, which is entirely self-executing and which, as noted, provides for automatic increases of 15% or 20% over June 30, 1947 levels. New York and Illinois follow the language of the Emergency Price Control Act quoted above. The Connecticut statute provides that the state rent commission's regulations shall "provide for the making of individual adjustments in cases in which the maximum rent is substantially higher or lower than generally prevailing rents in the same municipality or in which substantial hardship has resulted from increases in property maintenance, taxes and other costs" and then itself authorizes the local boards to make upward adjustments of the maximum rents in effect on the last day of federal control, not in excess of 15%, on substantially these same grounds. In New Jersey, the county boards are authorized to make such adjustments, not to exceed 10% of the rent lawfully charged on June 1, 1946 (sic), as they shall deem just and equitable, considering changes since January 1, 1942 in taxes, costs of maintenance and operation, the kind, quality and quantity of services furnished, and other relevant factors. The Missouri circuit court may modify any maximum rents which "because of unusual circumstances or conditions . . . are grossly inadequate or grossly excessive."

The Minnesota statute is something of a freak. It sets up a state rent commissioner, but does not in terms authorize him to provide for adjustments; it sets up local advisory boards, but permits them to recommend only general percentage increases in maximum rents. But it authorizes the district court in a fictitious eviction action to adjust maximum rents where "substantial hardship" exists.⁹⁶ Further, it permits increases by agreement between landlord and tenant, up to 15% of the maximum rent as of February 1, 1947, where the lease is made with the tenant in possession and is for not less than one year; while this provision is similar to the one contained in the federal act,⁹⁷ there is no pretense that the agreement is voluntary, since if the tenant refuses to agree to the increase the property is freed from rent control. The landlord and tenant may also agree to an increase in excess of 15% where "improvements, additional services, facilities or repairs" are involved—a handy loophole for evasion of maximum rents.

EVICTON CONTROL

Effective rent control inevitably entails restriction on the landlord's freedom to evict the tenant.⁹⁸ This has been recognized in the rent control laws of almost every country in the world, and the statutes here under consideration are no exception to the rule, although two

96. This provision is substantially identical with the similar subsection of the old OPA regulations and the OHE regulations. See note 93 *supra*.

97. See note 95 *supra*.

98. See *Block v. Hirsch*, 256 U.S. 135, 157 (1921).

of the states give only lip service to the principle, and take away with one hand the security of tenure which they give with the other. Thus in Virginia any tenant may be evicted if ". . . a specific date for the expiration of the tenancy was provided, and has expired, and the landlord has not accepted the payment of rent accruing after such expiration date" or where "under a tenancy from month to month the tenant, even if not in default, has been given at least ninety days written notice by the landlord of his intention to terminate the tenancy."⁹⁹ In Missouri, giving six months' written notice entitles the landlord to evict. Such provisions vitiate any effectiveness the statutes might otherwise have.

The New York, Illinois and Maryland statutes merely delegate authority to the agencies charged with the enforcement of rent control to regulate evictions, as did the Emergency Price Control Act;¹⁰⁰ the other statutes define the situations in which evictions will be permitted, as do the District of Columbia Emergency Rent Act and the Housing and Rent Act of 1947.¹⁰¹ The Connecticut bill, as introduced, fell into the first class; subsequently, a section on evictions was inserted in the bill, but the provision that the local boards should have power to "prescribe conditions, including time limits, under which evictions may be allowed" was, perhaps inadvertently, left in. The New Jersey act specifies certain grounds for eviction and empowers the state rent commissioner to define others.

The Connecticut act follows the old OPA regulations on eviction almost verbatim, so far as grounds for eviction are concerned. The most significant provisions are those limiting evictions on the ground that the landlord needs the premises for his own occupancy, to cases where the landlord owned the property before October 20, 1942 and has an "immediate compelling necessity" to occupy the premises, or is a veteran. As under the OPA, if the landlord acquired the premises after that date, he must apply to the local board for a certificate; the board must find that the purchase was made in good faith and not for the purpose of circumventing or evading the act. Elsewhere the requirements are less rigid. The Minnesota and Virginia statutes—like the District of Columbia act and the new federal act—permit eviction for self-occupancy simply on a showing that the landlord seeks in good faith to recover possession for his immediate and personal use and occupancy as housing accommodations, regardless of when he acquired the property. In New Jersey also any owner may evict if he seeks in

99. Va. Laws Spec. Sess. 1947, c. 68, § 11(a) (6), (7).

100. The language of the New York and Illinois acts is identical with the relevant provisions of the former Emergency Price Control Act, as to which see Willis, *supra* note 1, at 1134 n. 123.

101. See *id.* at 1134 *et seq.* for discussion of evictions under OPA and under the 1947 act.

good faith to recover possession for his own use; the tenant is entitled to six months' notice, unless the landlord is a veteran, in which case the waiting period is three months. In Missouri a "bona fide owner" who desires to use or occupy the premises "for purposes other than rental to others" is entitled to possession on giving ninety days' notice.

The Wisconsin act was intended to supplement the federal act, rather than merely to take over on its demise, although it may do that as well. It requires six months' notice where the owner seeks possession for his own use and occupancy, and since the federal law leaves the matter of time limits to state law, this provision is probably valid. But the further provision that to qualify as an "owner" the landlord must have "acquired title (legal or equitable) to the property and [have] made a bona fide payment of not less than 20 per cent of the purchase price thereof"¹⁰² stands on shaky ground, as long as the federal act is in force, for the latter was plainly meant to do away with the practice under the OPA whereby a purchaser could not evict unless, *inter alia*, he had paid 20% down.¹⁰³ Query, too, as to the proviso that, "Transfer from other accommodation owned by the owner shall not be deemed bona fide owner occupancy unless the tenant is offered such accommodation vacated by the owner at a rent proportionately comparable to the rent of the accommodations covered by the notice."¹⁰⁴

Minnesota and Virginia follow the District of Columbia and federal acts in allowing eviction where the landlord has contracted to sell the accommodations to a purchaser for his use and occupancy. Connecticut, Minnesota, Virginia and Wisconsin permit eviction for the purpose of demolishing the accommodations and replacing them with new construction, as does the new federal act; Wisconsin requires six months' notice in such cases, even during the life of the federal law. All of the acts, of course, provide for eviction where the tenant defaults in rent, violates a substantial obligation of the tenancy, causes a nuisance, etc., although the language varies. Wisconsin implements the federal act by making it a violation of a substantial obligation of the tenancy to sublet

102. Any credit extended by or guarantee of credit extended by the Veterans' Administration under the Servicemen's Readjustment Act of 1944 or by the state board of Veterans' Affairs is deemed a bona fide payment. WIS. STAT. § 234.26(2) (c) (Supp. 1947).

103. Note, too, that the federal act permits a landlord to evict for occupancy by a purchaser. Housing and Rent Act of 1947, § 209(a) (3).

Query whether the definition of "owner," quoted above, text accompanying note 102, is applicable in construing § 234.26(6) (g), relative to eviction for altering, remodeling or demolition by the "owner." Sec. 234.26(6) (d), on eviction for owner occupancy, expressly refers to § 234.26(2) (e).

104. The validity of these provisions may be upheld on the theory that the federal act merely imposes restrictions on the right to evict otherwise existing under state law, and that the state therefore may further cut down this right. The OPA regulations specifically provided that eviction might not be effected even under the regulations unless state law allowed it. Rent Regulation for Housing, § 6(e), 11 FED. REG. 12055 (1946).

without the landlord's written consent, and by authorizing eviction of a tenant who "unreasonably interferes with the peaceable possession of other residents in the same building." New Jersey, Minnesota and Wisconsin purport to authorize eviction pursuant to a valid and outstanding "eviction certificate" issued by the federal authorities. Inasmuch as the new federal act abolishes the certificate procedure, however, these provisions are a dead letter.¹⁰⁵

ADMINISTRATION

No two of the acts are the same in their approach to the question of administration. The New York statute, which was patterned after the Emergency Price Control Act, delegates broad powers to a "temporary state housing rent commission," to consist of a single commissioner appointed by the Governor. The Illinois act provides for "temporary community housing rent commissions," to consist of one, three, or five commissioners, as the legislative authority of the particular community may decide, to be appointed by the chief executive of the city, village, town or county. Maryland also delegates authority to city and county governments, and provides that they may create local rent control commissions or may designate an existing city or county department, office or agency to exercise such authority. In Connecticut, authority is divided between an unsalaried state fair rent commission to be appointed by the Governor in advance of termination of federal controls, a salaried "coordinator", similarly appointed, who is apparently to be a sort of executive secretary of the state commission, and unsalaried local fair rent boards to be named by the local governing bodies. The commission makes orders and regulations implementing the act, and the local boards carry out the provisions of the act and the regulations, subject to review by the commission and by the courts. The New Jersey Act is similar: it sets up a hierarchy of a state rent control commissioner (who is the Commissioner of the Department of Economic Development), a state rent control board, consisting of the members of the Economic Council, and county rent control boards, to consist of the members of the respective county boards of taxation. The commissioner issues regulations, subject to the approval of the state rent control board, which also acts in an advisory capacity in the administration of the act. The county boards pass on petitions for adjustment and assist in enforcement of the act. In Virginia, the Governor designates the areas subject to rent control, appoints the local emergency rent boards, and fixes the compensation of their members, but the boards operate independently of any control other than through judicial re-

105. This is not entirely true of Wisconsin, since that statute permits eviction under an outstanding certificate only where the ground for eviction is one set forth in the Housing and Rent Act of 1947—thus making it unnecessary to recommence proceedings *ab initio*.

view.¹⁰⁶ The Minnesota statute is similar to the new federal act in its division of jurisdiction between the Commissioner of Administration (an existing official) and local boards with purely advisory powers to recommend decontrol or percentage increases in rents in their respective areas.¹⁰⁷ In addition, it brings in a third agency in its provision for "hardship" adjustments by way of fictitious eviction actions in the district court. Under the Missouri statute, administration is vested in the circuit courts and circuit judges, which have power to extend, diminish or abolish rent control areas, and adjust or fix rents. The Wisconsin act is entirely self-executing, and has no administrative provisions save for the clause authorizing the Governor to decontrol particular areas or types of housing accommodations.

Except for these last two examples and the Maryland statute, all of the acts contain provisions for judicial and sometimes administrative review. The New York statute makes detailed provision for administrative review of regulations and orders of the state commission by way of protest proceedings before the commission itself, and for judicial review in the Supreme Court, the sections being patterned after the former Emergency Price Control Act. Illinois follows the New York model with respect to protests, but incorporates its own "Administrative Review Act" for court proceedings. Connecticut provides for review of actions of the local boards, first by filing a protest with the board, second by appealing to the state commission if the board denies the protest, and finally by appeal to the Court of Common Pleas. New Jersey, on the other hand, permits appeal directly to the Court of Common Pleas from an order of a county board, by-passing the state commissioner. In Virginia orders of local boards are reviewable by the circuit or corporation court, since there is no superior administrative agency;¹⁰⁸ in Minnesota, on the other hand, only orders of the commissioner are subject to appeal, since the local boards are purely advisory.¹⁰⁹

Any administrative plan must be adapted to local conditions and traditions in the state. Ideally, however, it would seem preferable to

106. Local governing bodies may, however, knock the props out from under the boards by declaring an end to the emergency in their areas. See p. 365 *supra*.

107. While the act provides that "No member shall sit in any case in which he, or any member of his immediate family, has a direct financial interest" and that "A written decision, stating briefly the facts and the reasons for the board's decision, shall be made by each board in each case," the act in terms gives the local boards no authority except to recommend decontrol or a general increase in maximum rents in the areas. The boards cannot pass on individual adjustment cases as can the boards under the federal act.

108. Virginia has an Administrative Procedure Act, VA. CODE § 580(1)-(8) (Cum. Supp. 1946) and it is not apparent why this act should not have been incorporated by reference.

109. Only orders of the commissioner "made pursuant to the provisions of section 4" are declared to be reviewable. The only orders referred to in § 4 are orders approving or disapproving recommendations of the local boards. See note 107 *supra*.

have a central authority:¹¹⁰ either an existing agency, as in Minnesota and New Jersey, or a new body or officer, as in New York and Connecticut. Some provision for community participation is undoubtedly desirable, although the New York and Wisconsin legislators did not see fit to make it; but the provision for local boards with merely advisory powers in the Minnesota statute does not go far enough, while the complete local autonomy granted in the Illinois, Maryland and Virginia laws goes too far.¹¹¹ The New Jersey and Connecticut schemes offer a desirable compromise between the two extremes.¹¹²

Judicial review is, of course, essential, but some of the statutes make it too extensive; the Virginia act, for instance, provides for immediate court review of rent board determinations of the "normal rent date", "normal rent", and classification of dwellings subject to control, although these are legislative matters better reviewed in individual cases.¹¹³

Vesting administrative duties in the courts, as in Minnesota and Missouri, is not to be commended. The New York rent control laws of the 1920's left all administrative questions to the courts, and the choice was not a happy one.¹¹⁴ The Minnesota and Missouri statutes, however, do not put as much of a burden on the courts as did the New York laws.

ENFORCEMENT

One of the deficiencies of the new federal act is its lack of teeth.¹¹⁵ Most of the state statutes are stronger in this respect, although whether or not they will be actively enforced is another question.

110. Compare the NDAC and NIMLO model acts, *op. cit. supra* notes 9 and 11.

111. But see the NIMLO draft bill, *op. cit. supra* note 11.

112. Members of local boards set up under the Housing and Rent Act might well be appointed to boards provided for in the state law, the more so as they were nominated by the respective state governors.

113. Va. Laws Spec. Sess. 1947, c. 68, § 10(a). Cf. Willis, *supra* note 85, at 441.

114. See Linowitz, *State Rent Control after Two World Wars*, 19 N.Y. STATE BAR ASS'N BULL. 10 (1947); Testimony of Carl Auerbach, General Counsel of OPA, *Hearings before U.S. Senate Committee on Banking and Currency on Controlling Rent* 527-8 (1947). The New York Business and Commercial Rent Laws of 1945 also rely largely on the courts for their administration, and Governor Dewey has expressed his pleasure that "the necessity of setting up more bureaus of an administrative kind to regulate economic affairs in this field" was avoided, N. Y. LEGIS. DOC. NO. 1 at 14 (1946). See also Governor Dewey's Memorandum on c. 273 of Laws of 1946, N.Y. STATE LEGIS. ANN. 205 (1946) ("Without the necessity for an expensive rule-making and administrative agency, the rights of tenants and landlords have been amply protected through the use of the courts.") However, the Governor has recognized that "It would have been impossible . . . to have used the machinery and procedure of commercial rent control with regard to residential space. Most tenants, poor and rich alike, could find themselves, under such procedure, involved in legal actions in the courts. Most of them would not have the economic strength to maintain their position in such litigation." Memorandum on c. 274 of Laws of 1946, N. Y. STATE LEGIS. ANN. 205 (1946).

115. See Willis, *supra* note 1, at 1152 *et seq.*

The New York, Illinois and Minnesota acts are copied after the Emergency Price Control Act, which gave enforcing officials an arsenal of sanctions. The commissions (commissioner, in Minnesota) may bring injunction actions, and may certify facts to the district attorneys for criminal prosecution; they may also intervene in private actions involving the respective acts or any orders, regulations, etc. thereunder. An overcharged tenant may bring an action for treble damages, or for an amount not less than \$25 nor more than \$50, whichever is greater; if the tenant does not sue within thirty days, or is not entitled to sue, the commission may bring the action. The Missouri act permits a tenant to sue for treble damages or \$25, whichever is the greater; no criminal sanctions are imposed except (upon landlords) for wrongfully depriving tenants of necessary services or making apartments uninhabitable, and (upon others) for attempting to bribe a landlord to terminate any existing tenancy subject to the act. New Jersey, on the other hand, provides only criminal sanctions, although presumably a tenant would have the right to recover at least the amount of any overcharges. Virginia permits the local board to sue for double the amount of any overcharge, half the recovery to go to the tenant and the balance to the state treasury; whether any criminal penalties may be invoked is not clear.¹¹⁶ The Connecticut act authorizes injunction actions by the state commission or local boards; criminal sanctions are also prescribed. The Wisconsin act in terms contains no sanctions of any kind, except for false statements in notices to evict for owner-occupancy or demolition.¹¹⁷

The New York, Illinois, Connecticut, New Jersey and Virginia acts authorize the administrative agencies to issue subpoenas and otherwise to obtain information—a basic necessity which, however, Congress has denied the Housing Expediter.

CONCLUSION

With the possible exception of the Virginia statute, none of the acts under discussion constitutes a carefully worked out charter for state rent control. Most of them are hodge-podges of provisions picked up from various sources—the Emergency Price Control Act, the Housing and Rent Act, model statutes and laws of other states. All of them contain defects and loopholes, although this is not always due to any fault of the draftsmen, for they could not foresee what Congress might do to federal rent control. Legislators in other states, however, if faced with the necessity for enacting their own rent controls, will turn to these statutes for guidance. The foregoing analysis may be of some assistance to them.

116. See Willis, *supra* note 85, at 426 *et seq.*

117. WIS. STAT. § 353.27 (Supp. 1947) provides a penalty of up to one year in jail or a fine up to \$25 for any "offense", the punishment for which is not prescribed by statute, but this provision would not seem to be applicable in the situation under discussion.